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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Unfair Competition

One phase of unfair competition is discussed by Judge Dickinson (United States District Court, E. D. of Penn.) in Premier Malt Products Co. vs. Kasser, et al., 23 F. (2d) 98, a suit for an injunction. Alleged similarity of labels was involved. The trade-mark infringement charge was not vigorously pressed. The unfair competition charge was the real one. The court says that the first concept of the wrong done in these cases was very definite, being that one had palmed off his own product for that of another—a trespass on a clearly defined right. The general complaint to-day, however, is, as in the instant case, that one has made advertising appeals (as by labels) similar to those in use by another. The supposititious case is mentioned of the dealer who first conceives the immensely popular idea of selling molasses in cans (instead of filling a jug from a barrel). The originator would resent imitation. He would look on this to be not unfair competition merely but downright robbery. But—"We cannot think of a legal wrong without first showing a right." And—there is an "utter absence of any real standard of right." "Whoever is doing the judging fixes his own standard." "Imitation it is said is the sincerest form of flattery, and our trouble is in finding a legal wrong in such flattery, unless it takes the form of palming off the imitation product and imposing it on purchasers as that of the plaintiff." The court feels that such imitation in itself is in a very real sense unfair but that it is not an unfairness which the law can enjoin when there is neither a copyright nor a patent right in the method imitated.

"Some Important Matters," in this issue beginning on page 139, is a convenient, helpful regular feature of The Corporation Journal.

Kenneth Kerr Lawson

President.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for March

Corporations in Fact as Well as in Name

Corporations, especially those with few shareholders—so-called close corporations, frequently exist in name only. A charter is secured, directors and officers elected and from then on nothing really corporate is done, except that perhaps the corporate reports are filed and corporate franchise taxes are paid. Stock certificates are not actually issued, corporate books are not kept, annual meetings are not held, capital is not actually paid in, bank accounts are not opened under resolutions of the board of directors, profits are withdrawn but no dividends are declared. In fact the corporation does not function as such—it is a mere name, and not a reality. If a test comes, invocation of the corporation may be in vain, it will be disregarded, the limited liability, the easy transmission of title, or other reason for which incorporation was secured, will be found to be non-existent. It is extremely easy for the purely legal corporate aspect of a close corporation to be lost sight of by the layman, busy with the business affairs of the corporation. It seems to us that here is an opportunity for counsel to render a very valuable service now usually left entirely unperformed. It might take the form of periodical examinations of the way the corporate client is conducting its purely corporate affairs and keeping its records, or it might take the form of letters of explanation and caution addressed to the client, making clear the importance of conducting the corporation as such in fact as well as in name.

Domestic Corporations

California.

Action for recovery of moneys paid on account of stock subscription. Suit is for the recovery of money paid to one of the defendants, one of the promoters of the defendant corporation, as "interim trustee," for stock in the corporation under a subscription agreement providing that subscribers should receive in consideration of their advance subscriptions, two shares for the par value of one. Thereafter on application to him made the commissioner of corporations refused a permit to issue stock to the subscribers in accordance with the terms of the agreements, but, on an amended application providing for the issuance of one share of stock for each amount of par subscribed a permit was issued. Stock tendered in accordance with the given authority was refused. The District Court of Appeals, First District, Division 1, California, affirms the judgment below for the plaintiffs. One of the contentions of defendants was that such contracts are made in view of the Corporate Securities Act (St. 1917, p. 673), and that the subscribers are tacitly agreeing to accept whatever the commissioner of corpora-

tions should see fit to grant. The court says: "It might more plausibly be argued that the effect of the Act would be to make such contracts as those under consideration void from the beginning, in which case the action would certainly lie." Grove vs. Charles W. Barrett Co., et al., 261 P. 739. J. W. O'Neill, of Oakland, and Frank McGowan, of Eureka, for appellants. H. M. Anthony, of San Francisco, for respondent.

Delaware.

Cumulative voting: review of election, generally, by court. In this case the Supreme Court of Delaware reverses the decision of the Court of Chancery (digested under Delaware on page 6 of the October 1927 Journal) although sustaining the lower court's holding that cumulative voting is permissible in Delaware only when the certificate of incorporation so provides, and that as the certificate here did not so provide any attempt to vote cumulatively was abortive and so that the shares so attempted to be voted should be counted as voted "straight". The reversal results from the fact that the court below held valid the vote of 45 shares which the Supreme Court finds to have been invalid. These shares were issued February 15, 1927; the election was held March 7, 1927; the statute provides that "no shares shall be voted which shall have been transferred on the books of the company within twenty days next preceding such election." No point was raised as to possible distinction between "issued" and "transferred." The Chancellor determined that the stock was not issued within the twenty-day period under the rule (that is not questioned) that "the first day should ordinarily be excluded but the day on which the act is to be done shall be included." (Beginning with, but excluding February 15, the day of issue, the period February 16 to March 7, both inclusive, embraces 20 days; therefore February 15 is not within the 20-day period.) The Supreme Court, however, says that here the point of departure is March 7, the election day, and that February 15 is "within twenty days," since, eliminating March 7 and counting February 15, February 15 is the twentieth day. It was contended that as the owner of these 45 shares was not a party to this action to review an election his right to hold the shares could not be passed on by the Chancellor in such proceeding. With this contention both courts agree but the Supreme Court is not in agreement with the further contention that as the owner of the 45 shares is not a party to the action his right to vote the shares within the 20-day period cannot be questioned and that the vote must be counted, in any event, the court saying that the proceeding being properly before the Chancellor to "review" he has "abundant authority to determine the validity of the votes cast." By virtue of the foregoing it was necessary for the Supreme Court to consider the vote of 54 shares, a question not passed on by the Chancellor because unnecessary in view of his decision otherwise. The Supreme Court finds the vote of the 54 shares to be valid and so, in reversing, holds that the seven directors returned as elected by the Judges of Election were in fact elected. Standard Scale and Supply Corp., et al., v. Chappel,

et al., (Jan. 17, 1928, not yet reported). Clarence A. Southerland and Charles C. Keedy, of Wilmington, for appellants. Andrew C. Gray, of Ward, Gray, and Ward, of Wilmington, and R. T. M. McCready, of Pittsburgh, Pa., for appellees.

Idaho.

Director of a corporation is entitled to compensation for services rendered to the corporation, even though compensation is not specifically authorized, if the services are other than strictly ex officio. The Supreme Court of Idaho affirms the judgment of the trial court awarding to the plaintiff-director the amount sued for as compensation for services rendered over a period of years as assistant general manager. It was contended on appeal that "respondent having been employed by the board and no salary having been fixed by resolution spread upon the minutes, he could not recover for his services." The court, citing Bassett vs. Fairchild, 6 Cal. Unrep. 458, 464, 61 P. 791, 793, in which Construction Co. vs. Fitzgerald, 137 U. S. 98 is referred to as stating the correct rule, says: "We believe the rule is well established that a director of a corporation who performs services for a corporation at the request of the board of directors, is entitled to recover on an implied promise to pay all the services are reasonably worth, inasmuch as the amount has not been fixed by a resolution of the board"; and—"the law will not permit a corporation to benefit by services rendered by an officer which do not pertain to his office as a director, without compensating him for the reasonable value of such services, solely because officers are forbidden to receive a salary unless fixed by the board of directors." Rowland vs. Demming Exploration Co., Trustees, 260 P. 1032. F. A. Hagelin and D. L. Rhodes, both of Nampa, for appellant. F. W. Byrd, of Nampa, for respondent.

Louisiana.

Suit by corporation on contract entered into by it under an assumed name. The Supreme Court of Louisiana holds with the plaintiff in this case that a contract entered into in Louisiana by a corporation under an assumed name is valid, saying: "We know of no law in this state prohibiting a corporation from transacting business or contracting under an assumed or trade name." National Oil Works, Inc. vs. Korn Bros. In re National Oil Works & Mill Supplies Co., Limited, et al., 114 So. 659. Dart & Dart, Louis C. Guidry, and Robert Ewing, Jr., all of New Orleans, for applicant. Samuel Wolf, of New Orleans, for respondents.

Michigan.

Extension of corporate existence to be effected without exaction of organization franchise fee. The Supreme Court of Michigan holds that on the renewal or extension of the old corporate life as provided by Chapter IV of Act No. 84, Public Acts of 1921 no franchise fee, as in the case of a new corporation, is to be exacted, since such act in estab-

lishing the steps to be pursued in procuring the extension is silent on the subject of a franchise fee and provides that "Any corporation which has thus been renewed *shall be the same corporation*" (not a new corporation). The Attorney General relied on §4, Act 182, Public Acts 1891 (C. L. 1915, § 11355) for the exaction, such act providing in terms for the fee, and that "renewed" corporations are to be regarded as new corporations for the purposes of the act. The court finds that the 1921 Act is a general revision and consolidation of statutes relating to ordinary business corporations and that though the 1891 Act was not expressly repealed thereby, the evident intent of the Legislature was to repeal it as was evidenced by an abortive effort in 1927 to repeal it as being obsolete and inoperative. "If a franchise tax for the privilege of an extension of corporate existence is to be imposed, the legislature must say so, and the act permitting such an extension, and saying nothing about a franchise tax, does not impose a franchise fee or admit of imposition of such a fee under the former law on the subject." C. N. Ray Corporation vs. John S. Haggerty, Secretary of State. Not yet officially reported.

New York.

Voting of stock by holder as collateral security for loan. Appellee here loaned money to a corporation, of which the appellant is the receiver in bankruptcy, notes being delivered as evidence of the debt the corporation's share stock, owned by its officers, being given as collateral security. Further details need not be recited for present purposes. The United States Circuit Court of Appeals for the Second Circuit says, inter alia: "By thus obtaining the capital stock and the accompanying corporate papers, Saltzman possessed no title to the corporate assets. What he had was a pledge for securing the payment of his notes. Possession of the stock did not convey ownership. It gave no power to use the stock as his own, either for the purpose of calling a stockholders' meeting or electing a new board of directors. He could not be elected president by a vote of the stock, as he attempted. By such election of officers of the corporation, they could not lawfully sign a deed of the corporation's property. The deed was held to be invalid below, and with this we agree." Corney vs. Saltzman et al., 22 Fed. (2d) 268. David Haar, of New York, for appellant. Hovell, McChesney & Clarkson, of New York (Sidney A. Clarkson, of New York, of counsel), for appellee Saltzman.

A state bank voting trust agreement entered into at a time when such an agreement was valid under the statute (Section 50 of the New York Stock Corporation Law) is held by the New York Court of Appeals, reversing the orders of the courts below, to be invalid now in view of the enactment of Chapter 120, Laws of 1925, effective March 12, 1925, by which the section was amended by adding the words "This section shall not apply to a banking corporation." The court directs the granting of petitioner's motion for a review of an election of directors held in January, 1927, at which the trustees of the voting trust voted in accordance with the agreement now held to have been then

invalid. In the Matter of the Application of Edward P. Morse in Respect to the Election of Directors of the Bank of America, February 14, 1928 (not yet officially reported). Nathan L. Miller, for appellant. Charles E. Hughes, for respondent. Frank H. Stewart, John Godfrey Saxe and others, for intervening stockholders.

North Dakota.

Bonds issued as collateral security for an existing indebtedness are invalid. In affirming the judgment of the District Court, Mercer County, North Dakota, directing the foreclosure of a mortgage and holding, inter alia, that an issue of bonds designated as Class A, issued as collateral security for pre-existing indebtedness, was invalid, the Supreme Court of North Dakota, after quoting Section 138 of the state Constitution which provides that "no corporation shall issue stock or bonds except for money, labor done, or money or property actually received," and stating that Section 4528 of the Compiled Laws of 1913 in similar language declares this constitutional policy, says: "It is well settled in this jurisdiction that a pledge of unissued stock of a corporation as collateral security for an existing indebtedness is prohibited by the constitutional and statutory provisions referred to. McAndrews vs. Idawa Gold Mining Co. (N. D.), 210 N. W. 514. * * * Proper regard for constitutional policy, therefore, requires a holding that stock issued as collateral security is invalid. * * * There can be no distinction in this respect between stock and bonds. They are treated in the same manner in the Constitution and the statutes and the same rule is plainly applicable to both." Dakota Trust Co. vs. Lucky Strike Coal Co. et al., (Anders et al., interveners). 215 N. W. 89. Schwartz & Higgins, of Golden Valley, for appellants Mercer County and others. O'Hare, Cox & Cox, of Bismarck, for appellant Marshall Malaise Lumber Co. T. H. McEnroe, of Fargo, for appellants Farr and Quinn. Conmy, Young & Burnett, of Fargo, for appellant Anders. Zuger & Tillotson, of Bismarck, for respondent Dakota Trust Co. Sullivan, Hanley & Sullivan, of Mandan, for respondents Finch, Dawson, Von Hagen, Red Trail Transfer Co., Klein, Quick Print Co., and Peterson.

Preferred creditors of insolvent corporation. In the instant case it is decided that a state bank has no power to prefer creditors, banking companies and other corporations being differentiated in this respect. At the outset of the development of its reasoning in reaching this conclusion the Supreme Court of North Dakota covers the state rule as applied to ordinary business corporations in language as follows, in part: "This court has previously held that an individual debtor may prefer creditors. * * * The holding is based on the statute (section 7218 of the Compiled Laws of 1913) which is declaratory of the common law. This statute makes no distinction between an individual debtor and a corporation debtor, and it is therefore held in this jurisdiction (and elsewhere under similar statutes) that a corporation may prefer a debtor. * * * As applied to corporations, the statutory declaration that a debtor may pay or secure one creditor in preference to another is necessarily inconsistent with the view that the assets of an insolvent cor-

poration constitute a trust fund for all the creditors; for, if the assets constitute a trust fund for all creditors, their application to the claims of some of the creditors to the exclusion of others would involve a breach of the trust upon which they are held by the corporate officers. The previous decisions of this court, therefore, that a corporation may prefer creditors, in effect constitute a denial of the trust fund doctrine, and we are not disposed in the consideration of this case to deviate from the principles heretofore applied." Baird vs. First Nat'l. Bank, 215 N. W. 810. Owens & Nelson, of Williston, for appellant, Usher L. Burdick, of Fargo, for respondent.

Pennsylvania.

Organization of corporation for sole purpose of purchasing, holding, and selling stock of other corporations is permissible. The attorney-general of Pennsylvania was asked by the Secretary of the Commonwealth whether or not "a corporation may properly be organized under the laws of Pennsylvania for the purpose of purchasing, holding, and selling the stocks of other corporations, either separately or in conjunction with other characters of securities and investments, provided, of course, that the corporation is created to transact but a single character of business." In reaching his conclusion that the answer is "Yes," the attorney-general reasons as follows: The Act of July 2, 1901, P. L. 603, provides that stock, etc., of other corporations may be bought, held, and sold by any corporation organized for profit; that, "it does not necessarily follow that because a corporation for profit may, as an incident to its main purpose, possess the power to hold stocks of other corporations, it may be incorporated for this particular purpose. We must look for legislation to authorize incorporation for such a purpose, and we find it in the 'Any Lawful Business' act of July 9, 1901, P. L. 624, and the 'Any Lawful Purpose' act of May 11, 1909, P. L. 515," and that the purpose stated *is* a "lawful purpose." 16 Penn. Corp. Reporter 434.

Texas.

Action by one member of a business trust against all the other members on account of amount due on purchase price of property sold to the trust by the member. One member of a business trust sold a parcel of real estate to the trust, promissory notes being accepted covering part of the consideration; a vendor's lien to secure payment of the notes was retained. Action was against the 61 other members of the business trust to recover on the notes. In the district court judgment went against defendants for the full amount of the notes, interest and attorney's fees, less the plaintiff's one-sixty-second portion of the obligation, the vendor's lien being foreclosed. The Court of Civil Appeals reversed, holding that the unincorporated joint-stock association or business trust was in its distinguishing name a necessary party to the suit. The Commission of Appeals of Texas, Section A, in turn reverses holding that the trust was a proper, but not a necessary, party (articles 6133 to 6138, R. C. S. 1925), but at

the same time saying that the judgment rendered by the district court was erroneous in that it should have been rendered against each of the defendants in amount equal to one-sixty-second of the amount found due, since—"While each partner is liable to one not a partner for the full amount of the debt owing by the partnership, his liability to a partner is only for that portion of the debt represented by his proportionate interest in the partnership. 30 Cyc, p. 452." Carl vs. Shore et al., 299 S. W. 860. F. P. Works, of Amarillo, for plaintiff in error, Carl Gilliland and W. H. Russell, both of Hereford, for defendants in error.

Washington.

Collection by receiver of assessment on stock placed before corporation went into receivership. Action is by the receiver to collect assessment against stock made prior to receivership. The Supreme Court of Washington affirms the judgment of the court below for the plaintiff, saying: "It should be borne in mind that this is not an assessment by a receiver wherein there is established the amount due from stockholders to pay the corporation's debts, but is an action to recover an assessment regularly placed before the receiver took charge, and agreed upon in the written subscription. Such an assessment is a debt owing to the corporation, whether it be solvent or not. Having been regularly placed against the stock, the whole amount is due and owing to the corporation, or the receiver when appointed, irrespective of how much is needed to pay approved debts. Nor is approval by the court required before bringing suit." Elliott vs. Foster et al., 259 P. 716. Harry Foster, of Seattle, for appellants. Spencer Gray, of Seattle, for respondent.

Wisconsin.

Purchase by a corporation of its own stock. The Supreme Court of Wisconsin in the course of its decision in the instant case says: "That a corporation has power to buy its own stock is settled by the decisions of this court. [Authorities cited.] These decisions are all to the effect that a corporation may thus buy its own stock so long as its assets are in substantial excess of its liabilities, and that for such purpose its capital stock is not to be considered as a liability. This is especially held in Marvin vs. Anderson, 111 W. 387, 87 N. W. 226." The corporation, here, was conceded to be "solvent in this sense," although, apparently, its assets did not exceed its debts plus the amount of its capital stock. Rasmussen et al. vs. Roberge et al., 216 N. W. 481. McConnell & Schweizer, J. R. Johnson, and C. H. Schweizer, all of La Crosse, for appellants. Higbee & Higbee, of La Crosse, for respondents.

Wyoming.

Effect of vote by absent director by telephone and subsequent signing of minutes of meeting. The digest of this case is restricted to the holding involving the one point suggested by the caption. The

disposition of corporate property was in question. Some of the directors were interested personally. At the meeting at which the disposition was authorized "it was necessary to count the two interested directors to make a quorum to do business." During the meeting an absentee personally disinterested director was called on the telephone; over the telephone he gave his consent to the sale; later the minutes were sent to him and he signed them. The defendants attempt to meet the objection that it was necessary to count the votes of interested directors and the lack of a disinterested quorum by this fact. The Supreme Court of Wyoming says: "It is not the vote alone, of an absent director, that is necessary to constitute a legal meeting. It is not the opinion of a majority of the board of directors acting as individuals that constitutes the act of the corporation, but the view and vote of a majority in meeting assembled. * * * The reason for this is that each director is entitled to the opinions and views of each other director in determining how to vote." And, so, the defect was not cured. Nicholson et al. vs. Kingery, et al. 261 P. 122. A. C. Allen and O. N. Gibson, both of Riverton, for appellants. H. C. Brome, of Basin, and C. H. Harkins, of Worland, for respondents.

Foreign Corporations

Arkansas.

On "doing business" by an unqualified foreign corporation. Action to recover balance of purchase money due on a typesetting machine sold at its home office by correspondence by an Iowa corporation to a resident of Arkansas and to foreclose the chattel mortgage. The court below sustained the defense contention that the plaintiff was a foreign corporation and had not complied with the laws of Arkansas permitting it to transact business there. The machine was shipped, from a point in Pennsylvania, to the company's own order in Arkansas, the usual papers being sent to the customer's bank at his request for execution before delivery of bill of lading. The court below relied on Kansas City Structural Steel Co. vs. State, Use of Ashley County, 161 Ark. 487, 256 S. W. 845, and Hogan vs. Intertype Co., 136 Ark. 52, 206 S. W. 58, it being "argued that the latter case is practically identical with the instant case." The Supreme Court of Arkansas reverses, saying that the transaction is one in interstate commerce differentiating the two decisions cited as, in the Hogan case, the machine after shipment into the state remained the property of the seller until by demonstration it proved suitable to the purchaser's purposes and was accepted by him, and as, in the other case, a foreign contractor sublet a portion of its contract for the building of a bridge in Arkansas and accumulated and stored in the state a quantity of material which it proposed to sell to the subcontractor as needed for purposes of the work in hand. The bank's activities in the matter was held to be a "mere incident to the contract which involved an interstate transaction." Linograph Co. vs. Logan, 299 S. W. 609. Hugh Basham, of Clarksville, for appellant. Paul McKennon, of Clarksville, for appellee.

Purchase by foreign corporation within state of notes from motor vehicle company and the collection thereof does not constitute "doing business" within state. The appellant is a Louisiana corporation. It has an arrangement with motor car dealers in Arkansas by which it purchases in its discretion, in New Orleans, notes taken from purchasers of cars covering part of the purchase price. Blanks are furnished by the credit company to the dealers, the notes are made payable to the credit company, and these together with credit statements and sales contracts are submitted to it at its New Orleans office. In the instant case there was default on such a note whereupon the credit company brought a replevin suit to recover possession of the car. One defense pleaded, successful below, was the doing of business in Arkansas by the foreign corporation without having complied with the state laws authorizing it to do business. The Supreme Court of Arkansas holds, on the authority of Davis & Worrell vs. General Motors Acceptance Corp., 241 S. W. 44, that the credit company was not doing business in Arkansas by virtue of the note purchases, and that "the subsequent conduct of the corporation in attempting to collect the note was a mere incident to the original transaction." Equitable Credit Co. Inc., vs. Rogers, 299 S. W. 747. A. D. Whitehead, of Helena, for appellant. W. G. Dinning, of Helena, for appellee.

Illinois.

"Doing business" by a foreign corporation. For the purposes of this digest the issue involved is the validity of a contract entered into in Illinois between a Delaware corporation, not licensed to do business in Illinois, and an Illinois corporation, the contention being that such contract is not binding and should be annulled or rescinded because the Delaware corporation was carrying on business in Illinois without license. The Supreme Court of Illinois holds that the Delaware corporation was not doing business in Illinois within the meaning of the statute (Smith-Hurd Rev. Sts. 1925, c. 32, §§ 80, 94). After stating that it is well established that a foreign corporation is not doing business within a state merely by virtue of the ownership of the stock of a domestic corporation, or by making loans or taking mortgages on lands situated within the state when such transactions are not within the purposes for which organized, or by doing acts merely preliminary to the conduct of future business as by the appointment of an agent for the transaction of such future business, etc., says, after citing decisions: "It is pointed out in those decisions that entering into a contract similar to the one now under consideration is undoubtedly 'transacting business' within the unlimited meaning of that term, but that such is not the sense in which the term is used in the statutes, and that it means carrying on work or transacting the business for which the corporation was organized or in which it is to engage, and that it means performing the work or business called for by the contract. * * * Ofttimes a foreign corporation may have occasion to bid for a job in its line of business that would mean to it contemplated profits, but if it had to be licensed before it could bid on such a contract,

or contract to do such work, the opportunity to do the same would be gone. To hold that it had to be licensed before it contracted for or secured business to be done would be unreasonable." Automotive Material Co. et al. vs. Amer. Stand. Metal Products Corp. et al., and W. R. Johnston Mfg. Co. vs. Same, 158 N. E. 698. Wetten, Pegler & Dale, of Chicago, for plaintiff in error. Charles S. Graves, of Chicago, for defendant in error.

Minnesota.

What constitutes "doing business"; service of process. Action was brought in a state court of Minnesota against defendant, a Delaware corporation, not licensed to do business in Minnesota. It has a controlling interest in the Pyramid Oil Company, a South Dakota corporation, licensed to do and doing business in Minnesota. On acquiring such control the defendant took active control and supervision of the Pyramid Company's business in Minnesota by giving orders to that company's employees and by sending its own vice-president to Minnesota from time to time and twice a year an auditor selected by it, for which services it received monthly compensation from the Pyramid company. However, the vice-president was also vice-president of the Pyramid company and the auditor was listed as an employee of such company and received compensation from it. Service on this vice-president, a resident of Kansas, then in Minnesota, is held to have been good, not because of the stock ownership, or because of the subsidiary relationship of the one company to the other, or on any theory of agency, but because under the circumstances, as is held, the defendant was present and "doing business" in Minnesota at the time, the Supreme Court of Minnesota saying: "It is our conclusion that, in continuing for some two years to send one of its officers and another employee into the state to supervise and control the business and affairs of the Pyramid Oil Company and charging and receiving compensation for so doing, the defendant corporation was doing business in this state in such a manner and to such an extent as to warrant the inference that it was present and subject to suit here." Ruff vs. Manhattan Oil Co. of Delaware, 216 N. W. 331. Jamison, Stinchfield & Mackall, of Minneapolis, for appellant. Thompson, Hessian & Fletcher, of Minneapolis, for respondent.

Texas.

Action in state court by unlicensed foreign corporation. Here the Court of Civil Appeals of Texas (Eastland) affirms the judgment below for the defendant as there were no assignments of error in the lower court, none was brought up in the record, and none appears on the face thereof, but says that it is of opinion "that the testimony sufficiently establishes the fact that appellant was a foreign corporation, doing and transacting business in this state without a permit so to do. In such case it had no right to use the Texas court as a forum in which to enforce the obligations arising out of such transactions and the trial court correctly dismissed appellant's cause of action. R. S.

arts. 1529, 1530, and 1536; Pierce Oil Corporation vs. Weinert, 106 Tex. 435, 167 S. W. 808; Blair vs. City of Houston (Tex. Civ. App.) 252 S. W. 883; Continental Oil & Cotton Co. vs. E. Van Winkle Gin and Machine Works, 62 Tex. Civ. App. 422, 131 S. W. 415; North American Service Co. vs. A. T. Vick & Co. (Tex. Com. App.) 243 S. W. 549." Viking Refrigerators, Inc. vs. Fischl, 299 S. W. 953. McGown, McGown & Anderson, of Fort Worth, and Gresham, Willis & Freeman, of Dallas, for appellant. Winfrey & Lane, of Dallas, for appellee.

Taxation

Massachusetts.

Excise tax: corporate excess; allocation of income. The petitioner lumber company is a Massachusetts corporation having its principal place of business in the Commonwealth. It buys lumber and lumber products in states other than Massachusetts and sells the same in other states including Massachusetts. An excise tax for 1924 imposed by authority of G. L., C. 63, §32 is in question. The tax equals the sum of $5 per 1,000 on the value of corporate excess plus 2½% of net income derived from business carried on within the State. Corporate excess is the fair value on April 1 of the shares of capital stock * * * less the fair value of * * * merchandise and other tangible property situated in another state or country. On April 1 the petitioner owned a large quantity of lumber in transit in other states in interstate commerce on account of which the state authorities refused to allow any deduction. The Supreme Judicial Court of Massachusetts (Suffolk) sustains the taxing authorities holding that the petitioner fails to maintain the burden imposed on it of showing that the personal property in question is "situated in another state or country," i.e., "It is not at rest and hence not situated, but is in transitory movement." The court finds that the corporation is liable to the excise tax because "carrying on business" in Massachusetts (its main office and principal place of business was there, its "corporate functions" were carried on there, bank deposits were kept there, dividends were paid from there, and "seemingly that portion of the petitioner's business which consisted of selling lumber on a commission is not interstate business") but holds that much of the petitioner's business was carried on outside the Commonwealth and so, that it is entitled to have its net income, which is one of the factors of the measure of the tax, allocated on the basis of carrying on business both within and without Massachusetts as provided by G. L., C. 63, §38. The tax was levied on the total net income without apportionment. Carlos Ruggles Lumber Co. vs. Commonwealth (two cases), 158 N. E. 897; 899. P. Nichols, of Boston (C. E. Bell, of Springfield, of counsel), for petitioner. A. K. Reading, Atty. Gen. (Alexander Lincoln, of Boston, of counsel), for the Commonwealth.

Mississippi.

Assessment de novo by circuit court for general property tax. The attorney-general of Mississippi appealed to the Circuit Court of Jack-

son County from the assessment, as finally fixed by the Board of Supervisors, of defendant's personal property for general property tax purposes based on the company's return and the assessor's assessment, since such return failed to show the value of the capital stock, including surplus and undivided profits, and since the board though increasing certain items of the assessment as made by the tax assessor did not add to the roll as made by the assessor the capital stock and undivided profits and surplus, or find the value thereof. The attorney-general petitioned for a writ of subpoena duces tecum to produce the company's books for inspection to the end that all necessary items be listed and adequately valued for assessment purposes. The circuit court refused to issue the process and instructed the jury that they could not consider anything except the property which had been listed on the assessment roll by the assessor and the board. The Supreme Court of Mississippi in reversing and remanding for a new trial holds that the circuit court was in error and that it has jurisdiction to determine the proper assessment de novo and that for that purpose the necessary books and papers should be made available for inspection in the presence and under the control of the court. Knox, Atty. Gen. vs. L. N. Dautzler Lumber Co., 114 So. 873. E. C. Sharp. of Corinth, and Rufus Creekmore, Asst. Atty. Gen., for appellant. Ford, White, Graham & Gautier, of Gulfport, for appellee.

Pennsylvania.

Application of the 4 mills "corporate loan tax." Section 17 of the Act of June 17, 1913 (P. L. 507) as amended by the Act of July 15, 1919 (P. L. 955; Pa. St. 1920, §20420) imposes a tax on "all scrip, bonds, certificates and evidence of indebtedness issued, and all scrip, bonds, certificates and evidences of indebtedness assumed, or on which interest shall be paid, by any and every" domestic or foreign corporation doing business in the commonwealth. The question here is, does this statute impose a tax "on accounts which are recorded on the books of a corporation and on which it pays interest, but which are not evidenced by any paper, document, credit memorandum, written acknowledgment or any substitute therefor, given by the debtor corporation to its creditor?" The Supreme Court of Pennsylvania answers this question affirmatively. The court feels that there is no question but that the entries in appellant's books are evidences of indebtedness; it calls attention to the fact that the Legislature did not qualify the term "evidences of indebtedness" by use of the word "outstanding"; and concludes: "We think the manifest purpose of the Legislature was to tax all indebtedness of corporations, however evidenced, and thus to place them all on an equality so far as loan taxes are concerned; otherwise a corporation which had borrowed money and given an obligation for it would be taxed, whereas one which had borrowed a like sum and made an entry thereof upon its books [merely] would escape the tax." Commonwealth vs. Imperial Woolen Co., 139 Atl. 199. Geo. Ross Hull (of Snyder, Miller & Hull), of Harrisburg, Pa., for appellant. Philip S. Moyer, Deputy Atty. Gen., and Thomas J. Baldrige, Atty. Gen., for the Commonwealth.

Notes

In the February number of The Corporation Journal a typographical error on page 108-109 caused the approximate number of pages in the forthcoming Poor's Register of Directors of the United States to be estimated as 28,000—instead of the intended figure of 2,800. March 1 is the scheduled publication date.

The newspapers early in February carried extensive stories of the return to prominence in the oil industry of Mr. J. S. Cosden after a retirement of several years. Mr. Cosden was the organizer of Mid-Continent Petroleum Corporation but lost control of the company in the unsettled markets of 1920-21. His new company was organized February 4 under the laws of Delaware. It is known as Cosden & Co., Inc., and has a capitalization of $5,000,000 preferred stock and 100,000 shares of common stock without par value. The Corporation Trust Company handled for counsel the details of incorporation in Delaware and acts as the company's statutory agent in that state.

Among the important February incorporations was that of Laurel Mill, Inc., to deal in cotton duck, cotton goods, etc. The total capitalization of the new company is $6,000,000. Incorporation was under the Delaware law and details were handled for counsel by The Corporation Trust Company.

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520 corporations were organized under the laws of Delaware from January 20 to February 20, as against 458 for the preceding 30-day period and 452 for the corresponding period of 1927.

Some Important Matters for March and April

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Annual Franchise Tax statement due between January 1 and March 15.—Domestic and Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

CALIFORNIA—Report on General Franchise due within 10 days after first Monday in March.—Domestic and Foreign Corporations.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic companies having capital stock.

Annual Income Tax Return due between January 1 and April 30.—Domestic and Foreign Corporations.

GEORGIA—Registration and Payment of license tax due January 1.—Delinquent April 30.—Foreign Corporations.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

MARYLAND—Annual Report due between January 1 and March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return due on or before March 15.—Domestic Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report due in April or May.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May.—Domestic Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise tax due on or before April 1.—Domestic Corporations.

NEW YORK—Annual Franchise Tax payable on or before March 15.—Domestic and Foreign, Real Estate and Holding Corporations, Transportation and Transmission Companies, other than those subject to the so-called income tax.

Annual Return of Withholding Agent due on or before April 15.—Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and return of information due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Report due between January 1 and March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report due on or before March 15.—Domestic and Foreign Corporations.

Corporate Loan Report due on or before March 15.—Domestic and Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

QUEBEC—Sworn Statement for Treasury Department due on or before May 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due between January 10 and March 15.—Domestic and Foreign Corporations.

Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Capital Stock Report due between first day of January and the fifteenth day of March.

Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Return of Information of dividend payments due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Analysis of Recent Amendments to Delaware Corporation Laws. Complete text of these important new features together with explanation of their effect.

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Six Points to Watch in Incorporation. A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.

Two Notable Certificates of Incorporation. Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to January, 1928.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.

Revenue Act of 1926. A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.

Amendments to New Jersey Corporation Laws. Full text of the ten amendments passed at the legislative session of 1927.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.